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3 Attorneys for Defendant AMBU INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THE LARYNGEAL MASK COMPANY
LTD. and LMA NORTH AMERICA, INC.

Plaintiffs,

V.

AMBU A/S, AMBU INC., AMBU LTD.,
AND AMBU SDN. BHD.,

Defendants.

AND RELATED CROSS ACTIONS

No. 07 CV 1988 DMS (NLS)

DECLARATION OF JOHN M.
WILLIAMSON IN OPPOSITION TO
PLAINTIFFS' MOTION TO
DISQUALIFY FINNEGAN
HENDERSON FARABOW GARRETT &
DUNNER, LLP

Judge: Hon. Dana M. Sabraw
Date: January 11, 2008
Time: 1:30 p.m.
Courtroom: 10

1 I, John M. Williamson, declare as follows:

2 1. I am an associate in the Washington D.C. office of Finnegan Henderson Farabow
3 Garrett & Dunner, LLP ("Finnegan"). The statements made in this declaration are based on
4 my personal knowledge unless otherwise indicated.

5 2. On November 20 or 21, 2006, Michael Jakes, a Finnegan partner, invited me to
6 participate in an interview with a company seeking counsel for possible patent litigation.
7 The meeting was set for November 22, 2006, the day before Thanksgiving. I did not
8 conduct any research or otherwise prepare for the meeting. When I first met Wendy
9 Ackerman and Stephen Marzen—representatives of Plaintiffs ("LMA")—in our offices on
10 the morning of November 22, I knew next to nothing about LMA or the possible patent
11 litigation.

12 3. The meeting lasted about forty minutes. Although I had a notepad and pen with
13 me, I took no notes and left the pen on top of my notepad throughout the meeting. During
14 the meeting, Mr. Marzen gave us a very general picture of the anticipated litigation between
15 LMA and Ambu, and he or Ms. Ackerman briefly described LMA's corporate structure in
16 response to Mr. Jakes' observation that he would like to have a clearer picture of LMA for
17 conflicts purposes. The LMA representatives showed us one laryngeal mask that I
18 understood to be the product at issue in the anticipated litigation between LMA and Ambu,
19 but I can't now recall if the mask they passed around was made by LMA or Ambu. They
20 explained in very basic terms how the mask worked—i.e., how it is inserted in the throat, not
21 worn over the mouth as it might appear at first glance. They also showed us a notice of
22 allowance from the Patent & Trademark Office and their recently approved patent
23 application. They did not leave any of those materials with us.

24 4. For our part, Mr. Jakes described his experience in patent litigation in the area of
25 medical devices. Mr. Jakes also described the general course of patent litigation in various
26 venues. We offered a broad-brush overview and did not give any specific recommendations
27 concerning LMA's possible litigation. I did not know enough to do so, having only leafed
28 through the patent application a few minutes earlier. Instead, we talked at a hypothetical

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1 level about differences among venues when it comes to caseload, timing, and the tendency to
 2 transfer cases. I confined my comments to general practices in a particular venue with
 3 which I am familiar.

4 5. I do not agree with Mr. Marzen and Ms. Ackerman's description of what was said
 5 at the meeting. Specifically, Mr. Marzen's "overview" involved nothing more than
 6 informing us that LMA's patent was about to issue and that LMA believed that Ambu's
 7 product infringed the patent. In addition, any discussion of patent claims, prior art,
 8 "alternative claim constructions," or infringement claims was entirely general concerning
 9 how those issues are typically litigated from a general standpoint. We did not discuss how
 10 LMA's case in particular might play out. Similarly, LMA did not convey to us its
 11 "objectives." LMA's representatives did express a general comment about Ambu but did
 12 not reveal any specific goal or objective.

13 6. Neither Mr. Jakes nor I offered legal advice to LMA on any topics. Having just a
 14 superficial overview of the case, we would not have been in a position to do so. We did *not*
 15 offer advice as to:

- 16 • which LMA subsidiaries should sue as plaintiffs;
- 17 • which Ambu entities should be sued;
- 18 • where the suit should be filed;
- 19 • whether LMA should assert non-patent claims;
- 20 • what counterclaims might be brought by Ambu, aside from the general observation
 that infringement defendants tend to seek a declaration of invalidity; or
- 21 • how much LMA should expect to recover.

22 I did not have the facts I would need in order to formulate any opinions on these or any other
 23 issues, and I certainly wasn't prepared to recommend any course of action to LMA during
 24 the meeting.

25 7. We did not provide any documents to Mr. Marzen or Ms. Ackerman except for
 26 marketing literature about Finnegan that included our attorney bios.

27 8. Mr. Jakes gave a straightforward assessment of how expensive patent litigation

1 can be in a typical case, stating that LMA should anticipate that the litigation it was
2 considering would cost in the range of \$5 to \$8 million. A consistent theme of the meeting,
3 as we talked about key procedural events in a typical patent case (such as summary
4 judgment proceedings and *Markman* hearings) was LMA's interest in understanding how
5 much those events cost.

6 9. The LMA representatives made it clear that Finnegan was not retained during the
7 meeting. Mr. Marzen or Ms. Ackerman said that they would get back in touch to let us
8 know whether LMA wanted to engage Finnegan. I left the meeting with the impression that
9 they were not likely to select Finnegan.

10 10. I had no further communications with Mr. Marzen or Ms. Ackerman after the
11 meeting. In the weeks following the meeting I ran into Mr. Jakes and asked if he had heard
12 anything from them. He responded that he hadn't heard back and did not think we would be
13 selected. I was quite surprised to learn later on that Mr. Marzen and Ms. Ackerman had in
14 fact recommended Finnegan to LMA as their preferred candidate for engagement in this
15 matter.

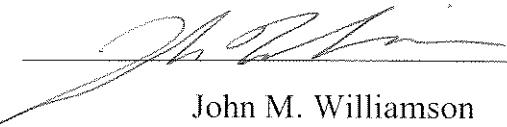
16 11. I received the January 5, 2007 memorandum from the firm's General Counsel
17 indicating that another Finnegan attorney, Bryan Diner, would be representing Ambu, and
18 screening me from that representation. Prior to that, I had not spoken to anyone other than
19 Mr. Jakes about what took place at the November 22 meeting with LMA's representatives,
20 and from that time forward I have abided by the rules set out in the ethical screen
21 memorandum. Other than communications with the firm's loss prevention counsel and the
22 outside counsel representing Finnegan in connection with this motion to disqualify, my only
23 communication about LMA or this matter was an email exchange with Gerald Ivey, a
24 Finnegan partner, in which Mr. Ivey asked if I would be available to work on the matter and
25 I reminded him that I was subject to an ethical screen. A true and correct copy of the
26 October 17, 2007 email correspondence with Mr. Ivey is attached hereto as Exhibit A. I
27 have had no other communications with Mr. Ivey about this case.

28 I declare under penalty of perjury under the laws of the United States that the foregoing

JOHN M. WILLIAMSON DECL. IN OPP'N TO MOT. TO DISQUALIFY 07 CV 1988 DMS (NLS)

1 is true and correct.

2 Executed on December 28, 2007 in Washington, D.C.

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John M. Williamson

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& RABIN
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen (18) years and not a party to the within action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024; and that I served the below-named persons the following document:

1. DECLARATION OF JOHN M. WILLIAMSON IN OPPOSITION TO PLAINTIFFS' MOTION TO DISQUALIFY FINNEGAN HENDERSON FARABOW GARRETT & DUNNER, LLP

I served the document by transmitting the document via Notice of Electronic Filing through CM/ECF on the date of this declaration to those persons as indicated below:

The addresses are as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on December 28, 2007.

Javier A. Melara
Email: jmelara@howardrice.com